

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
) 4:03CR3090
v.)
)
LUIS ALBERTO ERENAS-LUNA,)
)
Defendant.) MEMORANDUM AND ORDER
)
)

Defendant has filed a motion to dismiss the indictment. The motion was filed by the defendant's former counsel, and raises issues at the request of defendant, but in favor of which counsel has stated he cannot conscientiously argue. At the hearing on counsel's motion to withdraw, counsel requested that the court allow defendant's new counsel time in which to consider the defendant's positions on the matters raised by the motion and to inform the court whether he or she intends to pursue it. I agreed to do so.

In view of the fact that the motion will remain pending at the defendant's request and that its remaining pending will permit the defendant and his new attorney to review the case and prepare defendant's arguments before the court, it would be a manifest injustice to require the defendant to go forward to a trial before his motion has been decided. Defendant's interest in resolving the motion with his new attorney representing him outweighs his and the public's interest in a speedy trial. I therefore conclude that the time between the filing of the motion to dismiss and its ultimate disposition, even though it may otherwise exceed the time permitted by the Speedy Trial Act, 18 U.S.C. 3161 et seq., must be excluded from the calculation of time required by that Act in the interests of justice.

IT THEREFORE HEREBY IS ORDERED,

1. Substitute counsel for the defendant is given twenty days from the date of appointment in which to inform the court whether the defendant will pursue the pending motion to dismiss, filing 16, and if so, to file a brief in support of the motion. The government is given five working days after the filing of defendant's brief in which to respond.

2. The time between the filing of the motion to dismiss and its disposition shall be excluded from the calculation of time required under the Speedy Trial Act, 18 U.S.C. 3161 et seq.

DATED this 26th day of January, 2007.

BY THE COURT:

s/ *David L. Piester*

David L. Piester
United States Magistrate Judge